

## Remarks and Arguments

This response fully addresses the issues raised in the aforementioned Office Action. A detailed discussion of each issue is provided in the sections that follow. No new matter has been added by this response.

## Comments on Amendments to the Specification

Several paragraphs have been amended to correct typographical and/or grammatical errors.

Several paragraphs have been amended to add prime marks to several reference numerals to differentiate variants of several structural elements in the various exemplary embodiments as suggested by the Examiner. These paragraphs are now believed to be consistent with the corresponding figures that have likewise been amended to add the same prime marks to the same reference numerals identifying the same structural elements in the same exemplary embodiments. In some instances, text has been added in order for the addition of prime marks to make sense, *e.g.*, when a previously plural term designated by a single reference numeral has been changed to separate singular terms each designated by a unique reference numeral.

The first paragraph of the Summary of the Invention section on page 3 of the specification as originally filed has been amended to recite that the backsheet comprises a web made of a substantially liquid impervious material. Support for this amendment is found in the specification as originally filed, including in the first full paragraph on page 12 and in the third full paragraph on page 12.

A paragraph on page 8 of the specification as originally filed has been amended to delete references to a flap **42** and to instead refer to the backsheet pocket **45** because the portion of the pocket **45** previously identified in the corresponding figure is not actually a variant of the flap **42** shown in other figures.

A paragraph on page 9 of the specification as originally filed has been amended to delete references to pulling a back panel member through a backsheet opening **41** by a pull tab **46** and to instead refer to simply removing the back panel member in order to simplify the description and avoid any potential confusion of opening **41** with aperture **44**. The same paragraph has been

amended to delete a reference to a remaining back panel member being urged into fluid communication with the center section **50** through aperture **44** for the same reason.

A paragraph on page 11 of the specification as originally filed has been amended to identify that the embodiment being described is shown in Figure 9 and thereby facilitate its reading.

A paragraph on page 12 of the specification as originally filed has been amended to delete an extraneous recitation that an aperture in the backsheet makes the backsheet liquid pervious in the area of the aperture and thereby eliminate this potential source of confusion regarding the nature of the backsheet.

A paragraph on page 16 of the specification as originally filed has been amended to identify that the strips **52** and **51** being described are parts of the center section **50''** shown in the reference figure and thereby facilitate its reading.

A paragraph on pages 16 and 17 of the specification as originally filed has been amended to delete an extraneous reference to back panel members **34** and **35**, which are not shown in the figure being described, and thereby facilitate its reading. The same paragraph has been amended to clarify that it is the members of a multi-layer front or back panel that may be separated by fluid impervious material and thereby make this description consistent with the delineation elsewhere of the panels versus the panel members and with the depictions of the impervious layers in other figures.

Several paragraphs have been amended to correct the naming and reference numeral designations of particular structural elements, such as aperture **44** and opening **41**.

Several paragraphs have been amended to delete unnecessary reference numerals and thereby avoid the necessity of listing multiple primed and unprimed versions of those reference numerals when the description is generic to several variants of the named structural elements.

### **Comment on New Abstract**

A new Abstract has been provided in accordance with the instructions posted on the Office's web site relative to the revised amendment practice, which instructions explicitly state that "[i]f the Abstract is being substantially rewritten, submit a new abstract in clean text (no markings) accompanied by an instruction for the cancellation of the previous abstract." (From Slide 38 of *Slide Set: Revised Amendment Format 37 CFR 1.121 [text version]* (presented 25 September 2003; posted 10 October 2003))

### **Comments on Amendments to the Claims**

Claim 11 has been amended to delete the adjectival description of the backsheet as substantially fluid impervious and to instead recite that the backsheet comprises a web made of a substantially liquid impervious material. Support for this amendment is found in the specification as originally filed, including in the first full paragraph on page 12 and in the third full paragraph on page 12.

### **Comments on Amendments to the Drawings**

The Examiner's agreement to cut through the accumulated confusion and consider a "fresh" set of marked-up copies of the original drawings is appreciated. It is believed that the changes proposed in this response fully address all of the issues raised in the previous and current Office Actions with regard to the drawings. The approval of these changes is respectfully requested. Formal drawings incorporating the approved changes will be submitted following approval of these changes.

### **Response to Request for Help in Correcting Specification**

In **section 2** of the subject Office Action, the applicants' cooperation was requested in correcting any errors in the specification. Such cooperation is gladly given and it is noted that some of the amendments in this response resulted from such requested scrutiny of the subject Application.

### **Response to Request for Marked-up Original Drawings**

In **section 3** of the subject Office Action, the Examiner requested that a new master copy of the original drawing figures be submitted with markings to show all of the necessary changes. The requested new master set of drawings is appended to this response.

### **Response to Objections to Drawings**

In **section 4** of the subject Office Action, several objections to the drawings were raised. Each of these objections has been addressed as follows:

- as suggested, prime marks have been used to denote variations in particular structural elements between exemplary embodiments,
- the reference numeral **55** has been deleted from Figures 8 and 10, and
- the usage of the elements “opening **41**” and “aperture **44**” and the respective primed versions of their reference numerals has been made consistent throughout the text and the drawings.

### **Response to Objections to Format of Amendment**

In **section 5** of the subject Office Action, it was pointed out that the text was not underlined in two new paragraphs added in the previous response. It is respectfully noted that the instructions posted on the Office’s web site relative to the revised amendment practice explicitly state that “Newly added paragraphs or sections...must not be underlined.” (Underlining added for emphasis.) (From Paragraph II.B. of *Office Flyer: Amendments May Now be Submitted in Revised Format* [PDF] (posted 30 June 2003)) It is also respectfully noted that this instruction is consistent with 37 CFR § 1.121(b)(iii) as revised. Accordingly, it is believed that no action is necessary with respect to the format of the two added paragraphs.

It was also pointed out in the subject Office Action that the newly written Abstract in the previous response did not contain stricken through and/or underlined text. It is respectfully noted that the instructions posted on the Office’s web site relative to the revised amendment practice explicitly state that “[i]f the Abstract is being substantially rewritten, submit a new abstract in clean text (no markings) accompanied by an instruction for the cancellation of the previous abstract.” (From Slide 38 of *Slide Set: Revised Amendment Format 37 CFR 1.121* [text version] (presented 25 September 2003; posted 10 October 2003)) It is also respectfully noted that the submission of a new Abstract in whole is apparently to be treated like a submission of a new paragraph and that this treatment is not inconsistent with 37 CFR § 1.121(b)(iii) as revised. Accordingly, it is believed that the only action necessary with respect to the Abstract is the

submission of the new Abstract on a separate sheet, which action has been taken in the present response.

### **Response to Objections to Disclosure**

The following actions have been taken to address the four numbered “informalities” pointed out in **section 6** of the subject Office Action.

1) The Summary of the Invention has been amended to recite that the backsheet comprises a web made of a substantially liquid impervious material and thereby conform its description to that found in Claim 11 as amended in the present response.

2) Several paragraphs of the written description have been amended to make all of the designations of structural elements consistent with their identifications in the drawings as amended.

3) The word “reusable” has been deleted in accordance with the Examiner’s suggestion.

4) The wording of independent Claim 11 has been amended to delete the adjectival description of the backsheet as substantially fluid impervious and to instead recite that the backsheet comprises a web made of a substantially liquid impervious material and thereby eliminate any possible inconsistency relative to the backsheet being described as being fluid impervious yet comprising a discontinuity. Also, a paragraph on page 12 of the specification as originally filed has been amended to delete the potentially confusing recitation that such a discontinuity in the backsheet makes the backsheet liquid pervious in the area of the discontinuity and to instead recite simply that the discontinuity in the particular embodiment forms an aperture. Similarly, a paragraph on pages 13 and 14 of the specification as originally filed has been amended to delete the potentially confusing recitation that closing a flap over such a discontinuity makes the backsheet impervious to fluids.

### **Response to Objection to New Matter**

In **section 7** of the subject Office Action, an objection was raised with respect to a portion of the amendments to the specification submitted in July 2003 on the basis that this portion introduces new matter into the disclosure. This portion was identified as “[t]he amendments to page 12, line 24, lines 4 et seq thereof.” It is respectfully noted that this description of the location is unclear. It is respectfully presumed that the intended reference was to the two paragraphs added immediately before the paragraph beginning on page 12 at line 24 of the specification as

originally filed. This response is based on the above presumption and, if the presumption is not correct, a clear identification of the intended reference is requested, as well as an opportunity to respond on the basis of such clear identification.

The objection is respectfully traversed on the ground that no new matter is, in fact, introduced by the amendment. To demonstrate this, each of the questions and comments in paragraph 7 of the Office Action will be addressed in sequence.

It was asked "where is it disclosed that a component when not replaced or not removed is "made" nonremovable or nonreplaceable as now set forth, i.e. can not be removed rather than capable of removal or nonremoval and not removed, i.e. immobilized?"

The relevant definition of the term "make" is "to cause to be or become" (Merriam-Webster® on-line dictionary). The term "render" can have the same meaning (ibid.) and it might be useful to keep the term "render" in mind when reading the added paragraphs. Thus, to *make* a core component non-removable is to *cause it to be or become* non-removable, i.e., to *render* it non-removable. It has never been contended that components of the absorbent core are made non-removable by the mere fact that they are "not replaced or not removed". Instead, as stated in the second new paragraph, components of the absorbent core may be made non-removable from the chassis by being secured, attached, affixed, and/or sandwiched to or in the chassis, as described in the incorporated references. The listing in the new paragraphs of ways in which components may be made non-removable is merely a statement of fact made in reference to the disclosures of the incorporated references. This listing is not new matter any more than any other summary, description, restatement, rephrasing, or paraphrase of the disclosure of an incorporated reference is new matter.

As for the applicability of the listed ways of making a core components non-removable in the present invention, it is noted that an example of such immobilization is described in the specification as originally filed on page 12 at lines 11 and 12, where it is recited that "[t]opsheet **61** may...be adhered to the absorbent core", thereby providing a description identical to one of the examples in the incorporated Buell '003 patent and to one of the examples in the incorporated Osborn '264 patent.

It is noted that the referenced example on page 12 of the specification as originally filed clearly does not mean that the topsheet may be adhered to the entirety of the absorbent core, for this would contradict the description of specific core components as being removable and replaceable. Instead, as is clear by reference to the entirety of the disclosure, including the drawings, if the topsheet is adhered to the absorbent core, it is not adhered to any core component that is removable, but instead is adhered to a core component that is never described as being removable, such as the center section of the absorbent core. See, for example, Figures 1 through 5 and 7 through 13, where the center section is clearly shown disposed on the side of the core that contacts the topsheet. See, in particular, Figures 8 and 10, in which the topsheet is shown in spatial relation to the core components. See the numerous consistent and clear references within the specification to the front panel and back panel being removable and replaceable, while the center section is never at any point described as being removable or replaceable. Also, consider the description in the incorporated DesMarais *et al.* '345 patent that a core component may be affixed in the crotch area of the chassis, in conjunction with the center section being clearly described and shown in the subject Application as extending through the crotch area but the front panel and the back panel not being described or shown as extending through the crotch area.

In addition, the recitation that

“[t]he absorbent core comprises at least one, and preferably a plurality, of core components which are removable, with access for removal provided by at least one discontinuity forming an opening in the backsheet. Once removed, other absorbent core components or layers of components may remain in the absorbent article” (page

3, lines 31-35 of the specification as originally filed; underlining added for emphasis)

is clearly consistent with the notion that some components of the absorbent core may be made non-removable in any of the ways disclosed in the incorporated references while other components, *e.g.*, the front panel and the back panel, are removable and replaceable.

Similarly, the recitation that

“[a]s one back panel member becomes saturated by absorption of fluid from center section **50**, it may be removed, thereby exposing a substantially dry, fresh back panel member **35** for additional absorption from center section **50**. In this manner, the absorbent article may be refreshed or regenerated for a prolonged period of time

without removal from the wearer” (page 9, lines 2-6 of the specification as originally filed; underlining added for emphasis)

is clearly consistent with the notion that the center section always remains in the chassis while other components, *e.g.*, the front panel and the back panel, are removable and replaceable.

The fact that the non-removable disposition of a specific core component, *e.g.*, the center section, is not explicitly and repeatedly stated in the subject Application is reflective of the fact that the inventors are building upon the foundation of the work disclosed in the incorporated references, in which the entire absorbent core is typically non-removably disposed in the absorbent article. Hence the explicit and repeated emphasis on the removable and replaceable nature of specific core components in the absorbent articles of the present invention. Being skilled in the art, the inventors did not think it was necessary to point out the obvious, namely that their present invention is different from the results of the referenced work in that particular components that were previously non-removably disposed along with all of the other core components are now removable and replaceable. It is respectfully averred that although this obvious fact is not explicitly and repeatedly stated, a fair reading of the entirety of the disclosure of the present invention precludes any other conclusion. In support of this averral, it is pointed out that the lead inventor of the present invention, Mr. Gary LaVon, is a co-inventor on several of the incorporated references and clearly understands both their disclosures and the present invention.

In hindsight, it might have been preferable to explicitly and repeatedly list one or more core component(s) as being “non-removable”. However, holding that the failure to do so somehow negates the clear intention of the reference to relevant disclosures of non-removable core components in combination with the explicit and repeated emphasis on the removable and replaceable nature of specific core components in the absorbent articles of the present invention would be tantamount to penalizing the present inventors for being less than expert lexicographers and/or for failing to anticipate an expectation that they restate what was the obvious background for the description of their present invention at the time of filing the subject Application in 1997.

It is also respectfully noted that the Summary section as amended in March 2000 explicitly recites that the absorbent core comprises a non-removable absorbent core component. The fact that no objection to this amendment of the Summary section has been found in the file of the



subject Application leads to the conclusion that the Examiner accepted the terminology nearly four years ago.

It was asked "[w]here are DesMarais '345 and Osborn '264 incorporated with regard to the core attachment as set forth?"

The Desmarais *et al.* '345 patent and the Osborn '264 patent describe core materials, core structures in which those materials are used, and absorbent articles in which those core structures are used. In the subject Application, these references are incorporated by statements of incorporation located in and around descriptions of core materials and core structures that form part and parcel of the description of absorbent articles in which those materials and structures are used. The mere fact that each statement of incorporation was written into a specific paragraph relating to core materials does not limit the scope of the their incorporation. Instead, each reference was incorporated in its entirety and all portions of each reference are available, *i.e.*, neither reference was incorporated only with regard to a particular topic.

It was noted that "[a]ny response should include specific reference to the page and line number where support for the added material can be located".

It is respectfully noted that it is unclear whether this statement was meant to apply to the subject Application or to the incorporated references. Since the incorporations of the references are clearly stated in the subject Application, the locations in the incorporated references of the descriptions of the core components being made non-removable will be provided in this response.

In the DesMarais *et al.* '345 patent, the structure of an absorbent article in which the absorbent structure (*i.e.*, core) is affixed in the crotch area of a chassis is described in column 26 at lines 51-59, where the following is recited.

Another preferred type of absorbent article which can utilize the foam absorbent structures of the present invention...will generally include a nonwoven, flexible substrate fashioned into a chassis in the form of briefs or shorts. An absorbent foam structure according to the present invention can then be affixed in the crotch area of such a chassis in order to serve as an absorbent "core".

Also, in column 27 at lines 21-24 of the DesMarais *et al.* '345 patent, the following is recited.

Affixed to the crotch area of the article is a generally rectangular absorbent core 65 comprising an absorbent foam structure of the present invention.

In the Osborn '264 patent, the attachment of the absorbent core to adjacent members such as the topsheet or the barrier sheet (*i.e.*, backsheet) is described in column 4 at lines 36-42, where the following is recited.

The absorbent core 34 may be attached over the core's first or second major surfaces 46 and 49, respectively, to adjacent members such as the topsheet 25 and barrier sheet 16 by any of the means well known in the art, such as by spray-gluing or lines or spots of adhesive.

It was stated that the remarks in the last paragraph on page 19 of the previous response were "deemed non-persuasive in that the incorporated references do not teach the added specifics with regard to the components of the instant absorbent since they do not teach components which are removable/nonremovable."

It is respectfully noted that the intended meaning of the term "removable/nonremovable" is unclear, given that the slash mark (/) is sometimes used to indicate "and" and is sometimes used to indicate "or". Is the intended meaning removable and nonremovable, as in "the references do not teach both removable components and nonremovable components"? Or, is the intended meaning removable or nonremovable, as in "the references do not teach components that are alternatively removable or nonremovable?"

With respect to the former interpretation, it is respectfully averred that the failure of the incorporated references to teach both removable core components and non-removable core components merely serves to highlight the novelty of the present invention and to justify the inventors' omission of the obvious, as discussed above.

On the other hand, the latter interpretation merely leads back into the previously discussed notion that the present invention is not concerned with a mere choice of whether or not to remove a core component, but with a core component that is removable and replaceable being disposed in fluid

communication with another core component that is non-removable and so remains within the chassis of the absorbent article.

It was noted that “page 3, lines 13-21 are not limited to only the second and third components being removable or replaceable but rather “absorbent core components”, i.e. includes the first component also.”

It is respectfully noted that the quoted phrase appears in only one sentence at lines 13-16 and does not appear in the sentence at lines 17-21. Accordingly, it is presumed that the intended reference was to the sentence at lines 13-16.

First, it is noted that the referenced sentence appears at the end of the Background section among a series of statements of “desirable” objectives serving to point out failings of the prior art references described immediately above the reference sentence and does not appear in the Summary or the Detailed Description of the present invention.

Second, it is respectfully averred that the proposed interpretation is neither an accurate reading nor a fair interpretation of the complete sentence in which the cited phrase appears. The complete sentence reads as follows:

Accordingly, it would be desirable to have an absorbent article that has removable or replaceable absorbent core components wherein the absorbent core components can be removed or replaced without having to remove the absorbent article from the wearer.

Specifically, it is averred that it is grammatically clear that the second occurrence of the quoted phrase “absorbent core components”, which occurrence is preceded by the definite article “the”, refers back to the first occurrence of the same phrase in the same sentence, to which the adjectival modifiers “removable” and “replaceable” are appended. In other words, *the* absorbent core components that can be removed or replaced without having to remove the absorbent article from the wearer are the *removable or replaceable* absorbent core components recited earlier in the same sentence.

On the other hand, the proposed interpretation erroneously reaches out to arbitrarily encompass all of the absorbent core components described everywhere in the subject Application in the category of *removable or replaceable* absorbent core components. This is neither the plain meaning nor a reasonable interpretation of the language used in the reference sentence.

### **Response to Claim Rejections Under 35 U.S.C. § 112, second paragraph**

In **section 8** of the subject Office Action, all of the pending claims were rejected under 35 USC § 112, second paragraph, and it was indicated that the description of the backsheet in independent Claim 11 appeared to the Examiner to be inconsistent, in that the backsheet was described as being fluid impervious yet comprising a discontinuity. In this response, Claim 11 has been amended to delete the adjectival description of the backsheet as substantially fluid impervious and to instead recite that the backsheet comprises a web made of a substantially liquid impervious material. It is respectfully averred that one of skill in the diaper art can readily appreciate that a web made of a substantially liquid impervious material may have a discontinuity, such as an aperture as described in the specification, and that the amended description of the backsheet in Claim 11 contains no possible inconsistency. Thus, the rejection of Claim 11 and the rejections of the other pending claims, all of which depend from Claim 11, have been obviated. Accordingly, it is respectfully requested that the rejections under 35 USC § 112, second paragraph, be reconsidered and withdrawn.

### **Comments on Claim Language Interpretation**

In **section 9** of the subject Office Action, a number of statements were made with regard to the claim language. Several of these statements will be addressed in sequence.

It was “noted that the first core component is not limited to a single acquisition layer and a single acquisition/distribution layer and that the acquisition layer is not limited to only an acquisition function, i.e. could be another acquisition/distribution layer.”

It is respectfully noted that the latter portion of this statement, *i.e.*, the statement that “the acquisition layer is not limited to only an acquisition function, i.e. could be another acquisition/distribution layer”, is not suggested by the words in the claim, itself. It is not known from where this conjecture might have arisen nor is its relevance understood. If a specific

response to this statement is required, a clarification of the basis for the statement and of its relevance is requested, so that a response on that basis can be provided.

It was "noted that the components as claimed are not required to be different inserts but could be parts of the same insert or different inserts."

It is respectfully noted that the noun "insert" does not appear anywhere in the Summary, Detailed Description, Claims, or Abstract of the subject Application. In fact, the only occurrences of this noun are found in the description of a prior art product in the Background section. Thus, the term "insert" is not part of the claim language whose interpretation was addressed in **section 9** of the subject Office Action and the relevance of the statement containing the term is not understood.

As for the claimed components, it is respectfully averred that the claim language is clear in conveying that one component is non-removably disposed and the other component or components is or are removable and replaceable, thus precluding both the former and the latter from being parts of the same element.

It was stated that "as claimed the first component still could or could not be removable because the claim does not require the first component being made nonremoval [sic; removable?] or immobilized and the specification at, for example, page 3, lines 13-16 and page 12 does not require structure preventing nonremoval [sic; removal?], i.e. it can be a capability rather than a structural limitation since removal is determined by the user who can or cannot remove as desired as there is no structure claimed which prevents removal."

It is respectfully presumed that the intended wording was as indicated within the above brackets and this response is written on that basis.

It is respectfully pointed out that the claim language explicitly recites that the first core component is non-removably disposed in the claimed article, thereby precluding the interpretation that it is a matter of choice to remove or not remove that core component. Furthermore, as discussed at length in the previous response and in the present response, several ways of non-removably disposing a core component are clearly laid out in the incorporated references, with one of those ways also being explicitly recited in the specification of the subject

Application as originally filed. It is averred that it is not necessary to recite each of those several ways in the claim and that it is proper to use the descriptive term “non-removably disposed” to encompass those several ways. It is also averred that the term “non-removably disposed” is, in fact, a structurally descriptive term whose meaning is clear to one of skill in the art, especially in light of the specification and the references incorporated therein.

In addition, as discussed above with respect to paragraph 7 of the Office Action, the referenced text of page 3 at line 13-16 appears at the end of the Background section among a series of statements of “desirable” objectives serving to point out failings of the prior art references described immediately above the reference sentence and does not appear in the Summary or the Detailed Description of the present invention.

Because the referenced text on page 12 is not identified by line number, it is not known which text on page 12 was intended. However, if the intended reference was to the paragraph bridging from page 12 onto page 13, in which it is stated that the topsheet, the backsheet, and the absorbent core may be assembled in a variety of configurations, it is respectfully pointed out that in that short paragraph, several references in which the absorbent core is non-removably disposed are referenced and incorporated.

#### **Comments on Statement of Allowable Subject Matter**

In **section 10** of the subject Office Action, it was stated that the claims patentably distinguish over the prior art references. It is respectfully noted that the claims so distinguish for reasons beyond those stated in **section 10**, as discussed in detail in the previous response submitted in July 2003 and elsewhere in previous responses in the file of the subject Application.

#### **Request for Admission of Amendment After Final Office Action**

It is believed that this response places the subject Application in condition for allowance and its admission is respectfully requested. Among the several items addressed in this response, the present amendment to Claim 11 was not previously submitted because a rejection in the present form or with the present explanation was not previously presented in an Office Action.

### Summary of This Response

In light of the above amendments and remarks, it is requested that the objections and claim rejections be reconsidered and withdrawn and that the pending claims be allowed. The issuance of a Notice of Allowance at an early date is respectfully requested.

Respectfully submitted,

FOR: Gary Dean LaVon *et al.*

By: Michael P. Hayden

Michael P. Hayden

Registration No. 48,433

Phone: (513) 626-5800

Fax: (513) 626-3499 or 3004

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